Semantan Estate (1952) Sdn Bhd v The Registrar of Titles (Federal Territory)

HIGH COURT (KUALA LUMPUR) — ORIGINATING SUMMONS NO WA-24NCVC-301–02 OF 2017
AHMAD SHAHRIR J
31 DECEMBER 2024

Civil Procedure — Order — Stay of execution — Plaintiff obtained judgment that directed registrar of titles to transfer ownership and possession of land to plaintiff — There were government departments and agencies on land — Plaintiff obtained court's order pursuant to s 417 of National Land Code directing registrar of titles to implement judgment — Registrar filed application for stay of execution of order — Far-reaching consequences of immediate execution of order on public interest — Existence of ongoing settlement negotiations between parties — Whether special circumstances established — Courts of Judicature Act 1964 s 73 — National Land Code s 417

The dispute between the parties concerned the ownership of 263.272 acres of land ('the land') located in the Duta Enclave that were acquired by the government. At the material time, the land housed 14 government department and agencies. The dispute between the parties ended with the court's judgment ('the judgment') that the plaintiff retained beneficial interest in the land. The judgment required the Registrar of Titles (Federal Territory) ('the defendant') to transfer ownership and possession of the said land to the plaintiff. Subsequently, the plaintiff filed originating summons under s 417 of the National Land Code ('the NLC') seeking the court's order to compel the defendant to give effect to the judgment and via an order dated 7 August 2024 ('the order'), the court directed the defendant to implement the judgment. The defendant then filed a notice of appeal against the order and also the present application ('encl 57') for a stay of execution of the order. In opposing encl 57, the plaintiff relied on the case of *Proietti v Proietti* [2023] NSWCA 132 ('Proietti') from the New South Wales Court of Appeal and argued that no stay should be granted considering that the government's ownership of the land had been definitively determined to be unlawful. The plaintiff further argued that the government should not be allowed to benefit from its own wrong in unlawfully possessing the land.

Held, allowing the defendant's application for a stay of execution of the order with no order as to costs:

(1) The principles governing stay application were well established. Section 73 of the Courts of Judicature Act 1964 clearly stipulated that an

appeal shall not operate as a stay unless expressly ordered by the court. The court possessed absolute discretion to grant a stay but this discretion was not arbitrary. It ought to be exercised in accordance with established legal principles. Based on case authorities, in granting a stay, the court must carefully balance the competing rights of both parties. Further, special circumstances must be demonstrated to justify the granting of a stay. The special circumstances must specifically pertain to the enforcement of the judgment, not its validity. These circumstances must be exceptional in nature, surpassing what was considered usual or common (see paras 9–11).

(2) The court found that the defendant had established special circumstances that warranted the granting of a stay. Firstly, the court assessed the far-reaching consequences of immediate execution of the order, particularly in light of the land's current use for essential public services. The immediate transfer of possession would disrupt these services causing significant public harm. If a stay of execution was not granted, there would be immense irreversible consequences. While monetary compensation might in theory, be available as a remedy, it would not adequately address the practical consequences of disrupting public services and dismantling government infrastructure. Such actions would result in changes that could not be easily reversed even if the appeal ultimately succeeded. Secondly, the court considered the ongoing settlement negotiations between the parties. These negotiations had the potential to resolve not only the present dispute but also related proceedings thereby promoting a more comprehensive and lasting resolution. Based on the above findings, it was only appropriate that a stay be granted pending the determination of the appeal. Conversely, it would not prejudice the plaintiff in any manner if execution of the judgment was stayed for the duration of the appeal process (see paras 3, 18–20 & 26–28).

(3) The case of *Proietti* was distinguishable. While it was true that the plaintiff's beneficial interest in the land had been established, the present proceedings focussed on the practical implementation of that finding. This was being pursued via specific orders made under s 417 of the NLC. The primary distinction lay in the nature and scale of consequences flowing from immediate execution. In *Proietti*, the execution would merely require one brother to vacate a residential property whilst in the present case, the execution would disrupt vital public services affecting thousands of citizens who relied on government departments (see paras 12 & 14).

(4) The plaintiff argued that the government should not be allowed to benefit from its own wrong in unlawfully possessing the land. While this argument had merit, the stay application had to be considered in its

current context. The purpose of a stay was not to validate or condone past wrongs but to address the practical consequences of executing the judgment while an appeal was pending. Further, the order already provided a three-month period for compliance recognising the need for an orderly transition. Granting a stay pending appeal would align with this approach, allowing for a managed implementation of the judgment while preserving the rights of both parties (see paras 23–24).

[Bahasa Malaysia summary

Pertikaian antara pihak-pihak adalah berkenaan dengan pemilikan 263.272 ekar tanah ('tanah tersebut') yang terletak di Duta Enclave yang telah diambil oleh kerajaan. Pada masa yang material, tanah tersebut menempatkan 14 jabatan dan agensi kerajaan. Pertikaian antara pihak-pihak berakhir dengan penghakiman mahkamah ('penghakiman') bahawa plaintif mengekalkan kepentingan benefisial ke atas tanah tersebut. Penghakiman tersebut menghendaki Pendaftar Hakmilik (Wilayah Persekutuan) ('defendan') untuk memindahkan pemilikan dan milikan tanah tersebut kepada plaintif. Setelah itu, plaintif memfailkan saman pemula di bawah s 417 Kanun Tanah Negara ('KTN') bagi memohon perintah mahkamah untuk memaksa defendan melaksanakan penghakiman tersebut dan melalui perintah bertarikh 7 Ogos 2024 ('perintah tersebut'), mahkamah mengarahkan defendan melaksanakan penghakiman tersebut. Defendan kemudiannya memfailkan notis rayuan terhadap perintah tersebut dan juga permohonan semasa ('lampiran 57') untuk penangguhan pelaksanaan perintah tersebut. Dalam menentang lampiran 57, plaintif bergantung pada kes *Proietti v Proietti* [2023] NSWCA 132 ('Proietti') yang diputuskan oleh Mahkamah Rayuan New South Wales dan berhujah bahawa tiada penangguhan harus diberikan memandangkan pemilikan kerajaan ke atas tanah tersebut telah diputuskan secara muktamad sebagai menyalahi undang-undang. Plaintif seterusnya berhujah bahawa kerajaan tidak sepatutnya dibenarkan mendapat manfaat daripada kesalahannya sendiri dalam memiliki tanah tersebut secara tidak sah.

Diputuskan, membenarkan permohonan defendan untuk penangguhan pelaksanaan perintah tersebut tanpa perintah mengenai kos:

(1) Prinsip-prinsip yang mengawal permohonan penangguhan telah ditetapkan dengan sewajarnya. Seksyen 73 Akta Mahkamah Kehakiman 1964 dengan jelas menyatakan bahawa rayuan tidak boleh berfungsi sebagai penangguhan melainkan diperintahkan secara jelas oleh mahkamah. Mahkamah mempunyai budi bicara mutlak untuk memberikan penangguhan tetapi budi bicara ini tidak boleh digunakan dengan sewenang-wenangnya. Ia sepatutnya dilaksanakan mengikut prinsip undang-undang yang ditetapkan. Berdasarkan otoriti-otoriti kes, dalam memberikan penangguhan, mahkamah perlu mengimbangi hak kedua-dua pihak dengan berhati-hati. Selanjutnya, keadaan-keadaan

istimewa hendaklah ditunjukkan untuk mewajarkan pemberian penangguhan. Keadaan-keadaan istimewa tersebut haruslah secara khusus berkaitan dengan penguatkuasaan penghakiman, bukan keabsahannya. Keadaan-keadaan ini haruslah bersifat luar biasa, melebihi apa yang dianggap biasa (lihat perenggan 9–11).

(2) Mahkamah mendapati bahawa defendan telah membuktikan keadaan-keadaan istimewa yang mewajarkan pemberian penangguhan. Pertama, mahkamah menilai akibat yang meluas daripada pelaksanaan segera perintah tersebut, terutamanya berdasarkan penggunaan semasa tanah tersebut untuk perkhidmatan awam yang penting. Pemindahan pemilikan serta-merta akan mengganggu perkhidmatan ini yang akan menyebabkan kemudaratan awam yang ketara. Jika penangguhan pelaksanaan tidak diberikan, akan ada akibat yang tidak dapat dipulihkan. Walaupun secara teori terdapat remedi dalam bentuk pampasan kewangan, namun ia tidak akan menangani dengan secukupnya akibat praktikal gangguan perkhidmatan awam dan perobohan infrastruktur kerajaan. Tindakan sedemikian akan mengakibatkan perubahan yang tidak boleh diperbetulkan dengan mudah walaupun rayuan tersebut akhirnya berjaya. Kedua, mahkamah mempertimbangkan rundingan penyelesaian yang sedang dijalankan antara pihak-pihak. Rundingan ini berpotensi untuk menyelesaikan bukan sahaja pertikaian semasa tetapi juga prosiding-prosiding yang berkaitan dengannya, justeru, menggalakkan penyelesaian yang lebih komprehensif dan berkekalan. Berdasarkan dapatan-dapatan di atas, adalah wajar penangguhan diberikan sementara menunggu keputusan rayuan. Sebaliknya, penangguhan pelaksanaan penghakiman tersebut sepanjang proses rayuan tidak akan memprejudiskan plaintif dalam apa-apa cara sekalipun (lihat perenggan 3, 18–20 & 26–28).

(3) Kes *Proietti* boleh dibezakan. Walaupun benar bahawa kepentingan benefisial plaintif ke atas tanah tersebut telah dibuktikan, prosiding semasa memberi tumpuan kepada pelaksanaan praktikal dapatan tersebut. Ini dilakukan melalui perintah khusus yang dibuat di bawah s 417 KTN. Perbezaan utama terletak pada sifat dan skala akibat yang berbangkit daripada pelaksanaan segera perintah tersebut. Dalam kes *Proietti*, pelaksanaan tersebut hanya memerlukan seorang saudara lelaki mengosongkan harta kediaman manakala dalam kes semasa, pelaksanaan tersebut akan mengganggu perkhidmatan awam penting yang menjejaskan beribu-ribu rakyat yang bergantung kepada jabatan kerajaan (lihat perenggan 12 & 14).

(4) Plaintif berhujah bahawa kerajaan tidak sepatutnya dibenarkan mendapat manfaat daripada kesalahannya sendiri dalam memiliki tanah tersebut secara tidak sah. Walaupun hujah ini mempunyai merit, permohonan penangguhan tersebut perlu dipertimbangkan dalam

konteks semasanya. Tujuan penangguhan bukanlah untuk mengesahkan atau membenarkan kesilapan lalu tetapi untuk menangani akibat praktikal daripada pelaksanaan penghakiman ketika rayuan belum selesai. Selanjutnya, mengiktiraf keperluan untuk peralihan yang teratur, perintah tersebut telah menyediakan tempoh tiga bulan untuk pematuhan. Pemberian penangguhan sementara menunggu rayuan akan selari dengan pendekatan ini, membolehkan pelaksanaan penghakiman terurus sambil melindungi hak kedua-dua pihak (lihat perenggan 23–24).]

Cases referred to

Jagdis Singh a/l Banta Singh v Outlet Rank (M) Sdn Bhd [2013] 4 MLJ 213; [2013] 3 CLJ 47; [2013] 3 MLRA 104, CA (refd)
Kosma Palm Oil Mill Sdn Bhd & Ors v Koperasi Serbausaha Makmur Bhd [2004] 1 MLJ 257; [2003] 5 AMR 758; [2003] 4 CLJ 1, FC (refd)
Ming Ann Holdings Sdn Bhd v Danaharta Urus Sdn Bhd [2002] 3 MLJ 49; [2002] 3 AMR 2867; [2002] 3 CLJ 380, CA (refd)
Proietti v Proietti [2023] NSWCA 132, CA (distd)
Sarwari a/p Ainuddin v Abdul Aziz a/l Ainuddin [2000] 5 MLJ 391, HC (refd)

Legislation referred to

Courts of Judicature Act 1964 s 73
National Land Code s 417
Land Acquisition Enactment (Cap 140) (repealed)

Ira Biswas (with Janet Chai Pei Ying and Alexie Ng Ying Ching) (Chooi & Co) for the plaintiff.
Shamsul bin Bolhassan (with Nuur Zul Izzati bt Zulkipli) (Senior Federal Counsel, Attorney General's Chambers) for the defendant.

Ahmad Shahrir J:

INTRODUCTION

[1] This case concerned an application for a stay of execution of an order dated 7 August 2024. The order directed the defendant to implement a High Court judgment of 29 December 2009. The judgment required the defendant to transfer ownership and possession of approximately 263.272 acres of land located in the Duta Enclave to the plaintiff. At the time, the land was occupied by various government complexes, sports facilities, and other public amenities.

[2] After carefully considering the unique circumstances of the case, I weighed the extensive implications of immediate execution. I also took into account the competing interests involved. In light of these factors, I found that a stay of execution should be granted. This stay would remain in effect pending

the outcome of the defendant's appeal to the Court of Appeal. A

[3] The decision of this court was based on two primary considerations. First, this court assessed the far-reaching consequences of immediate execution, particularly in light of the land's current use for essential public services. The immediate transfer of possession would disrupt these services causing significant public harm. Second, I considered the ongoing settlement negotiations between the parties. These negotiations had the potential to resolve not only the present dispute but also related proceedings thereby promoting a more comprehensive and lasting resolution. B C

BACKGROUND FACTS

[4] The origin of this dispute dated back to the 1950s. During that period, the government purportedly acquired the land under the now-repealed Land Acquisition Enactment (Cap 140). In response to this acquisition, the plaintiff initiated Civil Suit No S7–21–213 of 2003 challenging the validity of the acquisition. D

[5] On 29 December 2009, Her Ladyship the Honourable Zura Yahya JC delivered judgment in favour of the plaintiff. The court declared that the plaintiff retained the beneficial interest in the land. It further ruled that the plaintiff was entitled to possession of the land. In addition, the judgment ordered the government to pay mesne profits as damages for trespass. The amount of mesne profits was to be assessed by the senior assistant registrar. E F

[6] The government's appeals were ultimately unsuccessful. In May 2012, the Court of Appeal affirmed the judgment of the High Court. The Federal Court in November 2012 refused to grant leave to appeal. Later, approximately six years after the refusal, the Federal Court dismissed the government's application for review. G

[7] On 27 February 2017, the plaintiff filed the present originating summons under s 417 of the National Land Code. The plaintiff sought orders compelling the defendant to give effect to the 2009 judgment. On 7 August 2024, this court allowed the plaintiff's application. The court ordered the defendant to transfer the land to the plaintiff within three months from that date. H

[8] The defendant filed a notice of appeal on 8 August 2024. Subsequently, on 13 August 2024 the defendant filed the present application for a stay of execution. At the material time, the land housed some 14 government departments and agencies. These entities provided various essential public services including the Inland Revenue Board, the Immigration Department, I

A the Examination Syndicate, the Federal Territory Education Department, the National Archives, the Malaysian Anti-Corruption Commission, and the Federal Territory Syariah Court Complex.

ANALYSIS AND FINDINGS

B

[9] The principles governing stay applications are well-established. Section 73 of the Courts of Judicature Act 1964 clearly stipulates that an appeal shall not operate as a stay unless expressly ordered by the court. The court possesses absolute discretion to grant a stay. However, this discretion is not C arbitrary. It must be exercised in accordance with established legal principles.

[10] The Court of Appeal in *Jagdis Singh a/l Banta Singh v Outlet Rank (M) Sdn Bhd* [2013] 4 MLJ 213; [2013] 3 CLJ 47; [2013] 3 MLRA 104 (CA) comprehensively outlined the principles governing stay applications. His D Lordship the Honourable Zawawi Salleh JCA (later FCJ) emphasised that in granting a stay, the court must carefully balance the competing rights of both parties. He further stated that special circumstances must be demonstrated to justify the granting of a stay.

E

[11] In *Kosma Palm Oil Mill Sdn Bhd & Ors v Koperasi Serbausaha Makmur Bhd* [2004] 1 MLJ 257; [2003] 5 AMR 758; [2003] 4 CLJ 1, the Federal Court clarified that special circumstances must specifically pertain to the enforcement of the judgment, not its validity. The court emphasised that these F circumstances must be exceptional in nature, surpassing what is considered usual or common.

[12] The plaintiff argued that no stay should be granted asserting that the government's ownership of the land had been definitively determined to be G unlawful. In support, the plaintiff cited the case of *Proietti v Proietti* [2023] NSWCA 132 from the New South Wales Court of Appeal. However, this case is distinguishable. While it is true that the plaintiff's beneficial interest in the land has been established, the present proceedings focus on the practical implementation of that finding. This is being pursued through specific orders H made under s 417 of the National Land Code.

[13] In *Proietti,* the dispute concerned a simple residential property between two brothers who inherited it from their mother. The order being stayed related solely to giving vacant possession. In contrast, the present case involves I 263.272 acres of land housing multiple government departments providing essential public services.

[14] The primary distinction lies in the nature and scale of consequences flowing from immediate execution. In *Proietti,* execution would merely require

one brother to vacate a residential property. Here, execution would disrupt vital public services affecting thousands of citizens who rely on government departments like the Immigration Department, Inland Revenue Board, and Syariah Courts.

[15] While both cases involve exhaustion of appeal rights regarding ownership, *Proietti,* did not involve complex implementation issues under specific statutory provisions. The present case involves orders under s 417 of the National Land Code which require specific steps for implementation including preparation and execution of transfer instruments, amendment of land registers, and handling of existing infrastructure.

[16] Furthermore, *Proietti,* did not involve ongoing settlement negotiations that could potentially resolve multiple related proceedings. The present case has this additional dimension where parties are actively working towards a comprehensive settlement.

[17] Therefore, while *Proietti,* established that exhaustion of appeal rights regarding ownership is relevant, it cannot be directly applied here given the vastly different scale, complexity, and public interest implications involved in executing the orders in question.

[18] It is the finding of this court that the defendant has established special circumstances that warrant the granting of a stay. Firstly, the land currently houses critical government departments and agencies that provide essential public services. The affidavit evidence demonstrated that at least 14 such entities were actively operating on the land. These entities were responsible for a wide range of functions including tax collection, immigration services, examination administration, educational management, anti-corruption operations, and the provision of Syariah judicial services through the Syariah Courts.

[19] Immediate execution would have forced these departments to cease operations or relocate on short notice. Such a disruption could have severely impacted vital public services. This was not merely an inconvenience. It constituted a special circumstance that directly affected public interest and the functioning of government services.

[20] Secondly, as stated in Johan Mahmood Merican's affidavit, the government was actively engaged in negotiations with the plaintiff's liquidators. These negotiations aimed at reaching an amicable settlement which could potentially resolve not only the present case but also related proceedings. While settlement negotiations on their own may not be sufficient to justify a stay, the prospect of a comprehensive resolution that addresses the

A interests of both parties was a relevant factor for consideration.

[21] This case is not a run of the mill case. In fact, if any insight is to be drawn from this case, it should be that this must be the last of its kind. It is one which is extraordinary given the nature of the aging dispute and the time span it has taken to finally and decisively come to this stage. As such, the considerations in determining whether there are special circumstances must indeed be made based on the unique and unmatched background of this case. After all, it is well-established that the index of special circumstances is never exhaustive and decided cases serve as guidelines for judges to consider when exercising judicial discretion.

[22] In *Ming Ann Holdings Sdn Bhd v Danaharta Urus Sdn Bhd* [2002] 3 MLJ 49; [2002] 3 AMR 2867; [2002] 3 CLJ 380, the Federal Court recognised that multiple factors could collectively constitute special circumstances. In the present case, the combination of potential disruption to public services and the ongoing settlement negotiations between the parties provided compelling grounds for the granting of a stay.

[23] The plaintiff argued that the government should not be allowed to benefit from its own wrong in unlawfully possessing the land. While this argument had merit, the stay application had to be considered in its current context. The purpose of a stay was not to validate or condone past wrongs but to address the practical consequences of executing the judgment while an appeal was pending.

[24] Furthermore, the High Court's order of 7 August 2024 already provided a three-month period for compliance recognising the need for an orderly transition. Granting a stay pending appeal would align with this approach, allowing for a managed implementation of the judgment while preserving the rights of both parties.

[25] In *Sarwari a/p Ainuddin v Abdul Aziz a/l Ainuddin* [2000] 5 MLJ 391, the Court of Appeal held that proof that a successful appeal would be nugatory constituted a special circumstance. In the present case, immediate execution could result in irreversible changes to the land's current use and infrastructure. These changes could occur before the appeal was heard, further supporting the need for a stay.

[26] The 263.272 acres of land commonly accepted as the 'Duta Enclave' has silently witnessed the construction a number of government complexes, sports facilities as well as a few other familiar landmarks. Altogether, these buildings and facilities presently accommodate a considerable number of personnel and human resources along with various types of assets not to

mention valuable and delicate historical records in the case of the National Archives. If a stay of execution is not granted and the plaintiff remains immediately at liberty to act on the judgment, there would be immense irreversible consequences.

[27] While monetary compensation might in theory, be available as a remedy, it would not adequately address the practical consequences of disrupting public services and dismantling government infrastructure. Such actions would result in changes that could not be easily reversed even if the appeal ultimately succeeded.

[28] Given that the decision of this court has far-reaching implications and the exceptional circumstances presented particularly the significant implications for public services and the ongoing settlement negotiations, it is only appropriate that a stay be granted pending the determination of the appeal. Conversely, it will not prejudice the plaintiff in any manner if execution of the judgment is stayed for the duration of the appeal process. I find that on this fact alone, a stay must be granted pending the determination of the appeal. These factors, taken together, made it appropriate to suspend the execution of the judgment pending the outcome of the appeal.

[29] I therefore allowed the defendant's application in encl 57 for prayer (a). Consequently, the order dated 7 August 2024 was stayed pending the determination of the appeal. In light of the public interest involved in this matter, I made no order as to costs.

Defendant's application for stay of execution of order allowed with no order as to costs.

Reported by Dzulqarnain Ab Fatar